

REMARKS

I. Status of the Claims

Claims 1-5, 7-12, and 14-31 are currently pending in this Application. Claims 1, 12, 23, and 27 are in independent format. Applicant has amended claims 1, 12, 23, and 27 herein.

The present response is intended to be fully responsive to the rejections raised by the Examiner and is believed to place the application in condition for allowance. Further, the Applicants do not concede any of the Examiner's comments not particularly addressed. Favorable reconsideration and allowance of the application is respectfully requested.

II. Claim Amendments

Applicant has herein amended each pending independent claim. Regarding claim 1, Applicant has amended claim 1 to recite that the interchangeable upper portion includes a rear portion and that the interchangeable upper portion is open at the rear portion. Regarding claims 12, 23, and 27, Applicant has amended each to recite that the releasable fasteners do not extend continuously along the entire outer exterior perimeter of either a sole or an article of footwear.

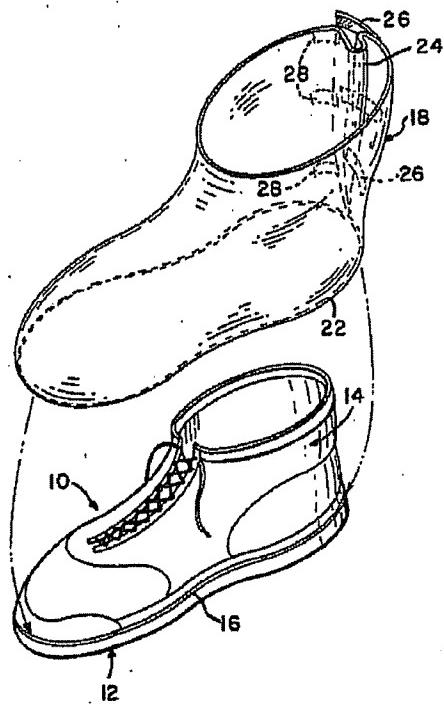
III. Responses to Claim Rejections Under Sections 102 and 103

The Examiner rejected claims 1-2, 4-5, 7-12, 14-17, and 19-29 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,144,759 to Mascotte ("Mascotte"). The Examiner also rejected claim 3 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Mascotte in view of an official notice. The Examiner also rejected claim 18 under section 103(a) as allegedly being unpatentable over Mascotte in view of U.S. Patent No. 5,505,011 to Bleimhofer. The Examiner also rejected claims 30 and 31 under section 103(a) as allegedly

being unpatentable over Mascotte in further view of U.S. Patent No. 2,302,596 to Bigio. Applicant respectfully traverses.

Mascotte is directed to "shoe covering members" used "to prevent . . . shoes from getting wet." See, e.g., Mascotte, col. 2, lines 12-13. "[T]o prevent the shoes from getting wet, shoe covering members 18 . . . have their bottom ends sealingly connected to the soles 12 of the shoes 10." Mascotte, col. 2, lines 12-15. To do so, the "shoe covering members" of Mascotte include an "O-ring member 20" that "sealingly secures covering member 18 onto sole 12." Mascotte, col. 2, lines 27-35. The o-ring member extends around the entire sole of a shoe. See, e.g., Mascotte, Figs. 1-2; see also col. 1, lines 66-67 ("[I]t extends along the entire side surface of sole 12.") (emphasis added). Further, so that the cover of Mascotte can fit over an upper section of a shoe, Mascotte discloses the use of "a fold 24 . . . located along the back or rear section of covering member 18." Mascotte, col. 2, lines 41-45; Figs. 1-2.

Figure 1 from Mascotte is reproduced below:



In Mascotte, if the seal that secures covering member 18 onto sole 12 did not extend around the entire sole, the cover would not serve the purpose of "prevent[ing] the shoes from getting wet," as water would be able to contact the shoe by entering under the bottom end of the cover. *See* Mascotte, col. 2, lines 12-15. Similarly, if the rear portion of the covering member 18 of Mascotte were open instead of using "a fold 24," the cover would again not serve the purpose of "prevent[ing] the shoes from getting wet," as water would be able to contact the shoe by entering through the rear of the cover. *See* Mascotte, col. 2, lines 12-15.

Applicant's currently claimed embodiments are different than the embodiments disclosed in Mascotte. In contrast to Mascotte, the embodiments of Applicant's pending claim 1 do not include "a fold 24," but are "open at the rear portion." Moreover, the embdoments of Applicant's pending claims 12, 23, and 27 do not include releasable fasteners that extend along an entire outer perimeter. For example, Applicant's currently pending claim 12 includes the recitation "the one or more releasable fasteners . . . not extending continuously along the entire outer exterior perimeter of the sole."

Figure 9 in Applicant's specification depicts "an interchangeable upper portion . . . being open at the rear portion" as recited in currently pending claim 1, as well as depicts the releasable fastener 204 not extending continuously along the entire outer exterior perimeter of either a sole or an article of footwear:

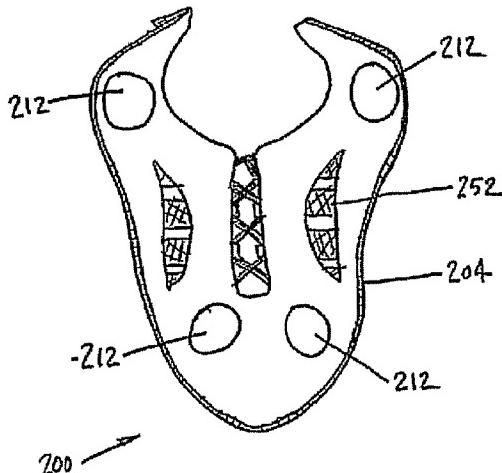


FIG. 9

Applicant respectfully submits that Mascotte does not disclose, teach, or reasonably suggest "an interchangeable upper portion . . . being open at the rear portion" or "one or more releasable fasteners not extending continuously along the entire outer perimeter." Not only does Mascotte depict and describe a "a fold 24" and a seal that extends around the entire sole of a shoe, an open rear portion or a seal that did not extend around the entire sole would not prevent the shoes from getting wet, as required by Mascotte.

Applicant therefore respectfully submits that the cited reference fails to disclose Applicant's presently claimed embodiments, and, for at least these reasons, Applicant respectfully submits that Applicant's pending independent claims 1, 12, 23, and 27 are allowable. In addition, without conceding the Examiner's assertions regarding the dependent claims, Applicant submits that the dependent claims are allowable for at least the reason that they depend from the allowable independent claims.

CONCLUSION

In view of the foregoing, Applicant respectfully submits that all of the pending claims are in condition for allowance. Therefore, Applicant respectfully requests favorable reconsideration and allowance of all of the claims. If the Examiner would like to discuss any aspect of this case, the Examiner is invited to telephone the undersigned at 312-913-0001.

Respectfully submitted,
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